APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 15661 September Term and Session, 1966

PAUL DE LUCIA,
Petitioner,
v.
IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

Petition for Review of an Order of the Immigration and Naturalization Service under Public Law 87-301.

November 17, 1966

Before Hastings, *Chief Judge,* Knoch, and Swygert, *Circuit Judges.*

Swygert, *Circuit Judge.* The petitioner, Paul De Lucia[1] seeks review of an order of the Board of Immigration Appeals denying discretionary relief under sections 249, 212(h), and 243(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1259, 1182(h), and 1253(h). The Board affirmed the decision of a special inquiry officer before whom the petitioner had been afforded an opportunity to establish his eligibility for the relief requested.

The petitioner's status as a deportable alien was established in an earlier proceeding and is not before us. *De Lucia v. Flagg,* 297 F.2d 58 (7th Cir. 1961), *cert. denied,* 369 U.S. 837 (1962). There we affirmed an order for the petitioner's deportation on the ground that he had

[1]The petitioner has also been variously known as Paul Salvi, Paul Ricca, Felice De Lucia, and Paolo Maglio.

entered this country in 1920 without a valid passport showing his identity and had committed a crime of moral turpitude (voluntary homicide) in Italy prior to his entry. The deportation proceeding was subsequently reopened upon motion by the petitioner in September 1964 for the limited purpose of presenting the petitioner's application for discretionary relief to a special inquiry officer and having that officer designate the country to which deportation was to be effected.

The first form of discretionary relief sought by the petitioner was the creation of a record of his lawful entry pursuant to section 249 of the act. Section 249 provides that a record of lawful admission for permanent residence of certain aliens may be made where no such record would otherwise exist if the alien satisfies certain requirements. Among the conditions which the alien must demonstrate to become eligible for the exercise of administrative discretion are that he entered this country prior to June 30, 1948, that he has resided here continuously since his entry, that he is "not ineligible" to citizenship, and that he is a person of good moral character.[2] The special inquiry officer found that the petitioner satisfied the first three requirements, but held that the petitioner failed to establish his eligibility for relief under section 249 because he did not show that he was a person of good moral character.[3] The special in-

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[2] In addition, the alien must show that he is "not inadmissible" under section 212(a) of the act insofar as it relates to the excludability of criminals. The criminal ground of inadmissibility may be waived by the agency under section 212(h) of the act, however, which, if done, removes what would otherwise be an existing bar to relief under section 249.

[3] The special inquiry officer based his finding with respect to the petitioner's moral character upon the lack of evidence presented by the petitioner, his incarceration for some twenty months during the preceding ifve-year period, his admitted gambling activities during 1962, and the special inquiry officer's conclusion that the petitioner had not testified truthfully at the hearing.

quiry officer also denied the relief requested as a matter of administrative discretion on the ground that the petitioner had not made a full disclosure of matters within his knowledge relevant to the exercise of such discretion. The Board denied the claim for registry under section 249 solely as a matter of administrative discretion for the same reason.

The Board's refusal to grant the relief requested was clearly warranted by the record. The petitioner refused to answer numerous questions relating to his criminal record both in Italy and the United States, the nature and source of his income, and many of his other activities. The petitioner's conduct amounted to a blatant refusal to furnish information pertinent to the exercise of administrative discretion and justified the withholding of relief.

In this review the petitioner does not attempt to advance the merits of his claim for registry under section 249, but instead contends that the hearing afforded him by the special inquiry officer was unfair and lacking in due process for various reasons. He asserts that he was prejudged by the special inquiry officer, prejudiced by adverse publicity, denied the rights of compulsory process and cross-examination, and prejudiced by an unlimited opportunity to cross-examine and other special courtesies extended to the Government. We find no merit in any of these contentions and will dispose of them in summary fashion.

To support his claim of prejudgment, the petitioner contends that certain statements by United States Attorneys General and other Department of Justice officials over a period of several years characterizing him as a "racketeer" and a "kingpin of vice" committed the special inquiry officer to action unfavorable to him. No evidence was introduced to connect any statements or supposed views of these officials with the special inquiry officer. No showing that the special inquiry officer's decision was controlled by his superiors was made. In

fact, an existing order of the Attorney General expressly directs all persons exercising hearing powers in deportation proceedings to exercise independent judgment in such matters, "uninfluenced by extraneous statements by persons official or unofficial." The petitioner contends, citing *Bufalino v. Kennedy*, 322 F.2d 1016 (D.C. Cir. 1963), that he was improperly denied a hearing to establish prejudgment when the issue was first raised in argument before the Board. In our view, the petitioner's meager presentation did not make a prima facie case of prejudgment and no such administrative hearing was required. *Marcello v. Bonds*, 349 U.S. 302 (1955). Further, the petitioner did not assert a claim of prejudgment against the Board, which is not bound by the special inquiry officer's order and may determine the case de novo.

The petitioner's contention that he was prejudiced by "intense publicity" which allegedly emanated from the Department of Justice and surrounded the hearing is unpersuasive. The record shows that the petitioner did not request a closed hearing, that he introduced no evidence to support his charge that the Department of Justice created unfavorable publicity, and that the special inquiry officer specifically stated he would not consider newspaper accounts in reaching his decision.

The petitioner complains that his requests to the special inquiry officer for the issuance of subpoenas were rejected, while similar requests by the Government were granted. The issuance of subpoenas is governed by regulation[4] and is within the discretion of the special inquiry officer. The petitioner did not comply with the regulation, and has failed to show either favoritism to the Government in the issuance of subpoenas or an abuse of discretion in denying such discovery to him.

Finally, the granting, denial, and limitation of the cross-examination of witnesses in a hearing on an appli-

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[4] 8 C.F.R. § 287.4(a)(2).

cation for discretionary relief is also a matter within the broad discretion of the special inquiry officer. The petitioner received a fair opportunity to present his case and has shown no abuse of discretion. *Wang v. Pilliod*, 285 F.2d 517 (7th Cir. 1960).

The petitioner requested a second form of discretionary relief at the hearing. He applied for the withholding of deportation to Italy pursuant to section 243(h) of the act, 8 U.S.C. § 1253(h), which relief was also denied. The hearing was conducted prior to the effective date of the amendment to section 243(h), which removed the words "physical persecution" to provide that the Attorney General may temporarily withhold deportation to any country in which the alien would be subject to "persecution on account of race, religion, or political opinion." Public Law 89-236 (October 3, 1965).[5] The petitioner contends that the hearing should be reopened to give him an opportunity to present evidence under the amended version of the statute. This contention, also presented to and rejected by the Board, is without merit.[6] The petitioner had ample opportunity to pursue a claim that he might be persecuted for political reasons, but he did not do so. The record contains evidence indicating that he would have been unsuccessful in any such attempt. Even in this review, the petitioner suggests nothing which might relate to his burden in a reopened hearing. Under the circumstances, the contention must be considered frivolous.

At the hearing before the special inquiry officer, the petitioner designated England as the country to which he wished to be deported should deportation be ordered. He

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[5] The special inquiry officer nevertheless considered the amendment in his decision.

[6] The Board applied the amended version of the statute in reaching its decision, in accordance with sellted law. Patsis v. INS, 337 F.2d 733, 737-38 (8th Cir. 1964), cert. denied, 380 U.S. 952 (1965).

was informed that if England refused to accept him or failed to inform the Attorney General of its willingness to accept him within three months after original inquiry, he would be deported to Italy. The order entered by the special inquiry officer so provides. The petitioner contends that the order is illegal because the record contains no evidence that Italy is presently willing to accept him or that England has refused to accept him. But we are here concerned only with the validity of the deportation order and not with its execution. The cases cited by the petitioner are distinguishable for that reason. *E.g., United States ex rel. Man v. Murff*, 264 F.2d 926 (2d Cir. 1959); *Lu v. Rogers*, 164 F. Supp. 320 (D.D.C.), *aff'd*, 262 F.2d 471 (D.C. Cir. 1958). We think that the order of deportation is in all respects proper and in conformity with section 243(a) of the act, 8 U.S.C. § 1253(a), and the regulations issued thereunder.

The petitioner contends that he was not given an adequate opportunity to present evidence relating to his request to stay deportation on medical grounds. The record shows that the petitioner was given a fair opportunity to introduce relevant medical information and that the evidence introduced as to his physical condition and the possible emotional impact of deportation upon the petitioner and his family was fully considered.

Finally, the petitioner's contention that his deportation will result in a cruel and unusual punishment prohibited by the eighth amendment is without merit. *United States ex rel. Circella v. Sahli*, 216 F.2d 33, 40 (7th Cir. 1954), *cert. denied*, 348 U.S. 964 (1955).

The Board's order is affirmed.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B

FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

Thursday, November 17, 1966

Before

Hon. JOHN S. HASTINGS, Chief Judge

Hon. WIN G. KNOCH, Circuit Judge

Hon. LUTHER M. SWYGERT, Circuit Judge

PAUL DeLUCIA,
Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

No. 15661

Petition for Review of an order of the Immigration and Naturalization Service.

This cause came on to be heard on the petition for review of an order of the Immigration and Naturalization Service and the record from the Immigration and Naturalization Service, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the order entered by the Immigration and Naturalization Service in this cause be, and the same is hereby AFFIRMED, in accordance with the opinion of this Court filed this day.

APPENDIX C

[Filed April 22, 1966]

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

(TITLE OMITTED)

* * *

PETITION TO REVIEW
DEPORTATION ORDER

1. This is a petition for review of a deportation order pursuant to 8 U.S.C. 1105(a) (Public Law 87-301, 75 Stat. 651).

2. Petitioner was born in Italy in 1897, came to the United States in 1920 and has resided here ever since.

3. In 1928 petitioner was naturalized as an American citizen and thereafter denaturalized in 1957. He is presently stateless.

4. On January 26, 1959, after hearings before a Special Inquiry Officer, an order of deportation was entered against petitioner upon the grounds that he entered the United States without proper documents in 1920 and had committed a crime involving moral turpitude prior to entry. The aforesaid order of deportation was affirmed on appeal by the Board of Immigration Appeals on August 25, 1959.

5. By order of the Board of Immigration Appeals dated September 18, 1964, the deportation hearing of petitioner was reopened and further deportation proceedings were conducted in 1964 and 1965.

6. In the reopened deportation proceeding, petitioner applied for permanent residence by filing a registry application. He also requested a stay of deportation upon grounds of physical persecution.

7. The reopened deportation proceedings resulted in a final order denying petitioner any form of discretionary relief and directing petitioner's deportation in the first instance to England and in the alternative to Italy.

8. The reopened deportation proceedings were conducted in an unfair manner and in violation of due process. The petitioner's motion to disqualify the Special Inquiry Officer should have been the subject of a hearing and should have been granted upon the ground of prejudgment.

9. The reopened deportation proceedings were rendered unfair by reason of unfavorable and prejudicial publicity initiated by the Department of Justice, by reason of prejudgment, by reason of the denial of compulsory process, denial of the right to cross examine and by favoritism extended to Government counsel.

10. The direction to deport petitioner to Italy was not supported by adequate findings as to the basis therefor or evidence that Italy has agreed to accept petitioner.

11. Petitioner is presently stateless, having lost his Italian nationality when he was naturalized as an American citizen in 1928. He did not regain such Italian nationality upon his denaturalization.

12. The respondent has sought and is seeking to deport petitioner to Italy upon the false representation that he is a citizen of Italy. Such actions upon the part of respondent are contrary to law.

13. Petitioner asserts that by reason of his background and the public statements and actions in the United States of various Government officials and the attitude of the Italian Government, he will be subject to persecution if he is deported to Italy.

14. Petitioner is married to a resident of the United States, is the father of three American born children, two of whom are World War veterans, and is the grand-

parent of four American born children. One of petitioner's sons is permanently disabled and requires constant medical attention. Petitioner's wife is likewise ill and under medical care.

15. Since 1941 petitioner has been afflicted with diabetes and a heart condition; that in 1942 he was injured when an elevator crashed to the basement of a building on South Wabash Avenue, where his hip, leg and foot were fractured; that he had one kidney removed in 1948; that as a result he must have constant medical care; that without such medical care petitioner's life would be seriously endangered.

16. The deportation of petitioner to Italy and the emotional strain accompanying such deportation and separation from his family will endanger his health and life.

17. The deportation of petitioner, a stateless alien, to Italy, considering his age and health, his family ties in the United States, and the length of his residence here, will violate due process of law and the constitutional prohibitions against cruel and unusual punishment.

18. The deportation order herein is void because the deportation laws are not applicable to a person who was a naturalized citizen.

19. From January 26, 1959, until the present time, petitioner has been at large on bail or supervised parole. Petitioner's liberty is being restricted by reason of the immigration restrictions imposed upon him.

20. Petitioner has exhausted his administrative remedies and no further administrative relief is available to him.

21. Criminal proceedings are not pending against petitioner for violation of 8 U.S.C. 1252(d) or (e).

22. No application for the relief requested herein has been made previously to this Court. The validity of the prior deportation order herein has been sustained in prior

litigation in this district, but the present deportation order and the present denials for administrative relief herein have not been the subject of judicial review.

WHEREFORE, Petitioner respectfully prays for an order:

(a) Declaring that the deportation hearing accorded petitioner was unfair and lacking in due process by reason of prejudgment, prejudicial publicity, denial of compulsory process, and favoritism extended to the Government.

(b) Declaring that the deportation order entered against him is null and void, contrary to law, and contrary to constitutional prohibitions in the Eighth Amendment to the Constitution.

(c) Declaring that the designation of Italy as petitioner's place of deportation is null and void and illegal.

(d) Declaring that it is improper for respondent to deport petitioner to Italy before securing a valid acceptance from such country based upon a full and true disclosure of all the facts.

(e) Declaring that the petitioner be accorded a fair and impartial hearing.

(f) Restraining respondent from apprehending, detaining or deporting petitioner.

(g) For such other and further relief as may be appropriate.

/s/ JACK WASSERMAN
/s/ DAVID CARLINER
/s/ JOSEPH I. BULGER

APPENDIX D

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
219 South Dearborn Street
Chicago, Illinois 60604

FILE: A11 129289
DATE: April 21, 1966

The person named below has been ordered deported from the United States in accordance with Section 243 of the Immigration and Nationality Act. Any person ordered deported from the United States may designate the country to which he may be sent provided such country is willing to accept him. This person has designated the country to which he wishes to be deported as England.

Name of deportee
DE LUCIA, Paul Aka SALVI, Paul Aka RICCA, Paul Aka MAGLIO, Parole
Date of birth — Place of birth
11/14/97 — Naples, Italy
Present nationality — Occupation
Italian — Retired
Residence in U.S.
1515 Bonnie Brae, River Forest, Illinois
Grounds for deportation
Excludable at time of entry into the United States. (Voluntary Homicide)
Prior residence in - None
Relatives or Friends in - None
Name and address of closest relative
Wife - Nancy DE LUCIA
Criminal Record
Convicted of voluntary homicide in Italy

Please return the duplicate of this letter, marked to show your decision concerning whether the person named will

or will not be accepted in the above-named country. The enclosed self-addressed envelope, requiring no postage, may be used for your reply. Your cooperation in this matter is greatly appreciated.

/s/ L. W. Hurney
District Director

For use of Consul

This case has been considered and it has been determined that the person named above ___ will X will not be permitted to enter United Kingdom (Name of Country) as a deportee from the United States.

/s/ F. H. Man
Vice Consul of
United Kingdom

APPENDIX E

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
219 South Dearborn Street
Chicago, Illinois 60604

File No. A11 129 289
Date: April 21, 1966

Mr. Paul DeLucia
1515 Bonnie Brae
River Forest, Illinois

As you know, following a hearing in your case you were found deportable and the hearing officer has entered an order of deportation. A review of your file indicates there is no administrative relief which may be extended to you, and it is now incumbent upon this Service to enforce your departure from the United States.

Arrangements have been made for your departure to Italy on April 26, 1966 from Chicago, Illinois on the Trans-World Airlines Flight #770.

You should report to a United States Immigration Officer at Room 334, 219 South Dearborn Street, Chicago, Ill. at 1:00 p.m. April 26, 1966, completely ready for deportation. At the time of your departure from Chicago, Illinois you will be limited to 44 pounds of baggage. Should you have personal effects in excess of this amount you must immediately contact A. C. McNeill at 828 7310, or call in person at the address noted above, and appropriate disposition of your excess baggage will be discussed with you.

Very truly yours,

/s/ L. W. HURNEY
District Director

cc: Joseph I. Bulger, Esquire
188 W. Randolph
Chicago, Illinois
Jack Wasserman, Esquire
902 Warner Bldg.
Washington, D. C.

APPENDIX F

APPLICATION FOR STAY OF DEPORTATION
United States Department of Justice
Immigration and Naturalization Service

File No. A11 129 289
Date: April 29, 1966

1. My name is Paul De Lucia.

2. My present address is 1515 Bonnie Brae, River Forest, Illinois.

3. I am a citizen or subject of Stateless, and hold a passport valid until _____.

4. My deportation has been directed to Italy, and I request a stay of deportation until indefinitely because of ill health. As the medical testimony of Dr. Champagne reveals (hearing of November 18, 1964, pages 49, et seq. I am suffering from the following: (a) diabetes; (b) coronary insufficiency; (c) high blood pressure and hypertension; (d) I have one kidney and my remaining kidney is disturbed or deteriorated; (e) enlargement of prostate gland; (f) low grade anemia (carotanemia). My deportation from the United States at this time from a psychological, emotional and medical point of view would endanger my health and my life.

I certify that all the statements I have made in this application are true and correct to the best of my knowledge and belief.

Dated at Chicago, Illinois, this 4th day of May, 1966.

/s/ PAUL DE LUCIA